

B O I E S , S C H I L L E R & F L E X N E R , L L P

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June 7, 2011

The Honorable James M. Peck
United States Bankruptcy Court
Southern District of New York
One Bowling Green
New York, New York 10004-1408

Dear Judge Peck:

We write in accordance with Local Rule 7056-1 to request a pre-motion conference on a motion for summary judgment that Barclays Capital Inc. ("Barclays") intends, with the Court's permission, to file seeking dismissal of Count II of LBHI's Complaint. Counsel for Barclays has discussed this proposed motion with counsel for LBHI, who in principle does not oppose Barclays' right to file such a motion but reserves its right to argue, after seeing Barclays' motion, that Barclays should not be entitled to a reply brief.

On May 18, 2011, LBHI filed a motion seeking summary judgment on the portion of Count II of its Complaint which alleges that Barclays failed to fulfill its obligations under section 9.1(c) of the Asset Purchase Agreement ("APA"). Barclays is currently scheduled to file its opposition brief on June 17, 2011. On that date, Barclays plans to file a motion seeking summary judgment dismissing Count II of the LBHI Complaint. Barclays plans to file a single, consolidated memorandum of law both in opposition to the LBHI summary judgment motion, and in support of the Barclays' motion. That memorandum will show:

- The plain language of Section 9.1(c) of the APA does *not* impose an obligation on Barclays to pay \$2 billion in bonuses.
- There can be no genuine dispute that the \$2 billion number that was listed on the 9/16/08 financial schedule initialed by Steve Berkenfeld was an *estimate* for the compensation obligations Barclays was assuming.
- There can be no genuine dispute that this \$2 billion estimate included *both bonus and severance payments*, and was not limited solely to bonuses. This was the unrebutted testimony of Lehman negotiators Bart McDade, Harvey Miller, and Mark Shapiro during the Rule 60(b) trial.¹

¹ See 4/26/10 Tr. at 161:1-10 (McDade); 4/28/10 Tr. at 32:3-5, 32:20-5 (Miller); 8/23/10 Tr. at 120:12-24 (Shapiro).

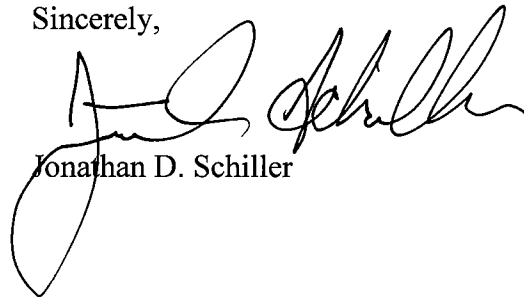
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- There can be no genuine dispute that Barclays paid approximately \$2 billion in bonus, severance and related tax payments that it assumed under the APA.
- In any event, LBHI certainly has suffered no damage as a result of the amount of bonuses Barclays paid under the APA.

For these basic reasons, Barclays is entitled to summary judgment dismissing Count II of the LBHI Complaint. Barclays requests that the Court schedule a telephonic pre-motion conference at its convenience, or advise the parties if no such pre-motion conference is necessary.

Counsel for Barclays and LBHI have also agreed that LBHI will file its reply in support of its motion and its opposition to the Barclays motion on or before July 8, and that (unless LBHI objects to Barclays filing a reply) Barclays will file its reply brief by July 22. The parties respectfully request that the Court schedule an oral argument on this matter on the first date that is convenient to the Court after July 27, 2011.

Sincerely,



Jonathan D. Schiller

cc: Robert Gaffey, Esq.
William Maguire, Esq.
James Tecce, Esq.